

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

<b>DONALD J. WIMP</b>	)	
Claimant	)	
VS.	)	
	)	Docket No. 214,227
<b>OSWEGO VETERINARY CLINIC</b>	)	
Respondent	)	
AND	)	
	)	
<b>FARM BUREAU INSURANCE COMPANY, INC.</b>	)	
Insurance Carrier	)	

**ORDER**

Claimant appeals from a preliminary hearing Order of November 19, 1996, wherein Administrative Law Judge Nelsonna Potts Barnes denied claimant benefits finding claimant failed to timely file written claim under K.S.A. 44-520a (Ensley) and further failed to file application for regular hearing within three years of claimant's date of accident or two years from the last date of compensation pursuant to K.S.A. 44-534(b) (Ensley).

**ISSUES**

- (1) Did the course of medical treatment authorized by respondent extend through claimant's appointment with Dr. Bortmes in June 1996?
- (2) Did respondent effectively notify claimant that his medical rights were being terminated prior to his appointment with Dr. Bortmes in June 1996?
- (3) Did the claimant's docketing of this claim in July 1996 satisfy the requirements of the Kansas Workers Compensation Act

with regard to timely service of written claim for compensation and timely filing of an application for hearing?

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Based upon the evidence presented and for the purpose of preliminary hearing, the Appeals Board finds as follows:

The Appeals Board finds claimant has failed to prove by a preponderance of the credible evidence that he satisfied the requirements of either K.S.A. 44-520a (Ensley) regarding his written claim to respondent or K.S.A. 44-534(b) (Ensley) regarding the filing of claimant's application for hearing and as such the Order of Administrative Law Judge Barnes should be affirmed.

Claimant suffered accidental injury when he suffered an electrical shock on June 9, 1989. He underwent medical treatment with Dr. Philip Bortmes, his family practitioner who was also the authorized treating physician. Claimant was last examined by Dr. Bortmes on July 12, 1989, with claimant being released to return to regular work on August 1, 1989. There were no restrictions placed upon claimant at that time. Claimant was provided a letter from respondent dated January 5, 1990, attached to a form D, Final Receipt and Release of Liability, which respondent requested claimant sign and return. The January 1990 letter indicated claimant had been "completely released."

Claimant next sought medical treatment in June 1996 slightly less than seven years after the date of accident and the last medical treatment provided to claimant by Dr. Bortmes.

Claimant served written claim on respondent on July 9, 1996, and filed the form E1 with the Division of Workers Compensation on July 10, 1996.

The Administrative Law Judge found claimant's written claim filing was untimely under K.S.A. 44-520a (Ensley) which states in part:

"(a) No proceedings for compensation shall be maintainable under the workmen's compensation act unless a written claim for compensation shall be served upon the employer by delivering such written claim to him or his duly authorized agent, or by delivering such written claim to him by registered or certified mail within two hundred (200) days after the date of the accident, or in cases where compensation payments have been suspended within two hundred (200) days after the date of the last payment of compensation. . .  
."

Claimant argues that his actions are timely because respondent never notified him that his medical benefits had been terminated. This argument is defeated by respondent's

letter of January 5, 1990, which advised claimant that he had been “completely released.” This is a clear indication that additional medical benefits were not contemplated. Claimant’s arguments were further defeated by his own actions in that he did not seek medical treatment from August 1989 until June 1996 a period of almost seven years.

Claimant’s reliance upon Johnson v. Skelly Oil Co., 180 Kan. 275, 303 P.2d 172 (1956) and Blake v. Hutchinson Manufacturing Co., 213 Kan. 511, 516 P.2d 1008 (1973) is misplaced. In Johnson, the insurance company notified the doctor that it was terminating his authorization to treat claimant but failed to notify the claimant. In Blake, the treating physician referred claimant to a different doctor, a specialist. The claimant then complained about the treatment and was referred by the treating doctor to a second specialist. The authorization of the original treating physician was never revoked by the insurance company. The second specialist provided treatment but the insurance company refused to pay for same. The Court in Blake found that the insurance company’s refusal to pay the bills followed by its attempt to rely upon K.S.A. 1972 Supp. 44-520a, the written claim statute, was inappropriate as the treating doctor was never advised that his authority had been revoked thus causing all referrals by said treating doctor to also be authorized. In this instance the treating doctor released claimant to work without restrictions and the insurance company notified claimant by letter in January 1990 that he had been completely released. There was no reasonable expectation on claimant’s part that additional medical treatment was contemplated or authorized.

Claimant also relies upon K.S.A. 44-534(b) (Ensley) which states:

“No proceeding for compensation shall be maintained under the workmen’s compensation act unless an application for a hearing is on file in the office of the director within three (3) years of the date of the accident or within two (2) years of the date of the last payment of compensation, whichever is later.”

It was acknowledged that the respondent’s report of accident was filed June 29, 1989, with the last payment of compensation occurring in August 1989, thus causing all time limits to begin shortly after claimant’s date of accident. Claimant filed the E1 with the Director of Workers Compensation on July 10, 1996, well beyond the statutory time limits set in K.S.A. 44-534(b) (Ensley). The Appeals Board finds that the Order by Administrative Law Judge Barnes denying claimant compensation for failure to satisfy the requirements of either K.S.A. 44-520a (Ensley) or K.S.A. 44-534(b) (Ensley) was well justified and should be and is hereby affirmed.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Nelsonna Potts Barnes dated November 19, 1996, should be and is hereby affirmed in all respects.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of January 1997.

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BOARD MEMBER

c: Steven J. Jarrett, Overland Park, KS  
Leigh C. Hudson, Fort Scott, KS  
Nelsonna Potts Barnes, Administrative Law Judge  
Philip S. Harness, Director